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NANLISHA D. STEWART

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NANLISHA D. STEWART,

Plaintiff,

v.

CHECK CITY PARTNERSHIP, LLC,

Defendant.

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: Civil Action No.: _____
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COMPLAINT

For this Complaint, Plaintiff NANLISHA D. STEWART, by undersigned
counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's violations of the Telephone
Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA") by negligently,

1 knowingly, and/or willfully placing automated calls to Plaintiff's cellular phone
2 without consent, thereby violating the TCPA.

3 2. This action also arises out of Defendant's violations of Nevada
4 Revised Statutes Chapter 604A.010 *et seq.* ("NRS 604A"), and the harassment of
5 Plaintiff by Defendant in its illegal efforts to collect a high-interest loan as defined
6 under this Chapter.
7

8
9 3. Plaintiff alleges as follows upon personal knowledge as to Plaintiff
10 and Plaintiff's own acts and experiences, and, as to all other matters, upon
11 information and belief, including investigation conducted by Plaintiff's attorneys.
12

13 4. Defendant has, through its conduct in collecting a loan governed by
14 NRS 604A, violated NRS 604A.5041 (hereinafter "NRS 604A.5041").
15

16 5. Defendant CHECK CITY PARTNERSHIP, LLC is a "licensee" as
17 that term is defined by NRS 604A.075.
18

19 6. NRS 604A.5041 incorporates the Fair Debt Collection Practices Act
20 (FDCPA), as amended, 15 U.S.C. §§ 1692a to 1692j, which applies herein "even if
21 the licensee is not otherwise subject to the provisions of the [FDCPA]."
22

23 7. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367 and this
24 Court has original jurisdiction over Plaintiff's TCPA claims pursuant to 28 U.S.C.
25 § 1331. *Mims v. Arrow Fin. Serv., LLC*, 132 S.Ct. 740 (2012).
26

27 8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) &
28

1 (c), because Plaintiff resides within the District of Nevada, a substantial portion of
2 the events or omissions giving rise to the claim occurred in this District, and
3 Defendant regularly conducts business in this District.
4

5 **PARTIES**

6 9. Plaintiff NANLISHA D. STEWART (“Plaintiff”), is an adult
7 individual residing in Las Vegas, Nevada.

8 10. Plaintiff is, and at all times mentioned herein was, a “person” as
9 defined by 47 U.S.C. § 153(39).
10

11 11. Defendant CHECK CITY PARTNERSHIP, LLC (“Check City”) is
12 doing business in the State of Nevada.
13

14 12. Check City is and at all times mentioned herein was, a corporation
15 and is a “person,” as defined by 47 U.S.C. § 153 (39).
16

17 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

18 **A. The Debt**

19
20 13. Plaintiff allegedly incurred a financial obligation (“Debt”) to Check
21 City.
22

23 14. The Debt was a “high-interest loan” as defined by NRS 604A.0703.

24 15. NRS 604A.5041 provides that:
25

26 If a customer defaults on a high-interest loan, the licensee
27 who operates a high-interest loan service may collect the
28 debt owed to the licensee only in a professional, fair and
lawful manner. When collecting such a debt, the licensee

1 must act in accordance with and must not violate sections
2 803 to 812, inclusive, of the federal Fair Debt Collection
3 Practices Act, as amended, 15 U.S.C. §§ 1692a to 1692j,
4 inclusive, even if the licensee is not otherwise subject to
5 the provisions of that Act.

6 16. As such, a violation of the Fair Debt Collection Practices Act
7 (FDCPA) a though j is also a violation of NRS 604A.

8 **B. Check City Engages in Harassment and Abusive Tactics**

9 **FACTS**

10 17. One February 21, 2020, Plaintiff filed for Chapter 13 Bankruptcy
11 (“Bankruptcy”). Plaintiff’s Bankruptcy was assigned case number 20-10984-abl.

12 18. Plaintiff scheduled the Debt in the Bankruptcy. *See* Bankruptcy ECF
13 No. 1.

14 19. Check City received notice of the Bankruptcy through the Court’s
15 BNC noticing system. *See* Bankruptcy ECF No. 14.

16 20. However, Check City persisted in contacting Plaintiff to collect the
17 Debt, even after the Bankruptcy was filed.

18 21. Specifically, Check City continued calling, emailing, and texting
19 Plaintiff to collect the Debt. Plaintiff informed Check City multiple times of the
20 Bankruptcy and her representation by counsel regarding the Debt, and explicitly
21 instructed Check City to stop contacting her.

22 22. Plaintiff’s protestations notwithstanding, Check City continued
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1 bombarding her with demands to pay the Debt.

2 **C. Plaintiff Suffered Actual Damages**

3 23. Plaintiff has suffered and continues to suffer actual damages as a
4 result of Check City's unlawful conduct.
5

6 24. Further, Plaintiff alleges that Check City's actions at all times herein
7 were "willful."
8

9 25. As a direct consequence of Check City's harassing phone calls, acts,
10 practices and conduct, Plaintiff suffered and continues to suffer from anger,
11 anxiety, emotional distress, frustration, and has otherwise been totally annoyed by
12 Check City's intrusive and illegal collection efforts. Plaintiff has also lost the use
13 of personal and family time while enduring these frustrations.
14
15

16 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

17 26. In 1991, Congress enacted the TCPA in response to a growing number
18 of consumer complaints regarding certain telemarketing practices.
19

20 27. The TCPA regulates, among other things, the use of automated
21 telephone dialing systems.
22

23 28. 47 U.S.C. § 227(a)(1) defines an automatic telephone dialing system
24 ("ATDS") as equipment having the capacity –
25

26 (A) to store or produce telephone numbers to be called,
27 using a random or sequential number generator; and

28 (B) to dial such numbers.

1 29. Specifically, 47 U.S.C. § 227(1)(A)(iii) prohibits any call using an
2 ATDS or an artificial or prerecorded voice to a cellular phone without prior
3 express consent by the person being called, unless the call is for emergency
4 purposes.
5

6 30. According to findings by the Federal Communications Commission
7 (“FCC”), such calls are prohibited because automated or prerecorded telephone
8 calls are a greater nuisance and invasion of privacy than live solicitation calls. The
9 FCC also recognized that wireless customers are charged for incoming calls.¹
10

11 31. On January 4, 2008, the FCC released a Declaratory Ruling wherein it
12 confirmed that autodialed and prerecorded calls to a wireless number by a creditor,
13 or on behalf of a creditor, are permitted only if the calls are made with the “prior
14 express consent” of the called party.²
15

16 32. On July 10, 2015, the FCC issued FCC Order 15-72, wherein the
17 FCC³ stated that “[a] caller may not limit the manner in which revocation [of prior
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22 ¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG
23 Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

24 ² *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act*
25 *of 1991*, 23 F.C.C.R. 559, 23 FCC Rcd 559, 43 Communications Reg. (P&F) 877, 2008 WL
26 65485 (F.C.C.) (2008).

27 ³ See Declaratory Ruling and Order, Adopted June 18, 2015 and Released July 10, 2015
28 regarding *In the Matter of Rules and Regulations Implementing the Telephone Consumer*
Protection Act of 1991, CG Docket No. 02-278, WC Docket No. 07-135
(https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1.pdf).

1 express consent to call] may occur” and that the “burden is on the caller to prove it
2 obtained the necessary prior express consent”. *Id.* at ¶ 30.

3 33. Further, consumers (like Plaintiff) may revoke consent through any
4 reasonable means. *Id.* at ¶ 47.

6 34. Nothing in the language of the TCPA or its legislative history
7 supports the notion that Congress intended to override a consumer’s common law
8 right to revoke consent. *Id.* at ¶ 58.

10 35. Indeed, some consumers may find unwanted intrusions by phone more
11 offensive than home mailings because they can cost them money and because, for
12 many, their phone is with them at almost all times. *Id.* at ¶ 61.

14 36. Consumers have a right to revoke consent, using any reasonable
15 method including orally or in writing. *Id.* at ¶ 64.

17 **ALLEGATIONS APPLICABLE TO ALL TCPA COUNTS**

18 37. As described above, Plaintiff received numerous unsolicited calls and
19 text messages from Check City after filing the Bankruptcy.

21 38. Upon information and belief, Check City employs an automatic
22 telephone dialing system (“ATDS”) which meets the definition set forth in 47 U.S.C.
23 § 227(a)(1).
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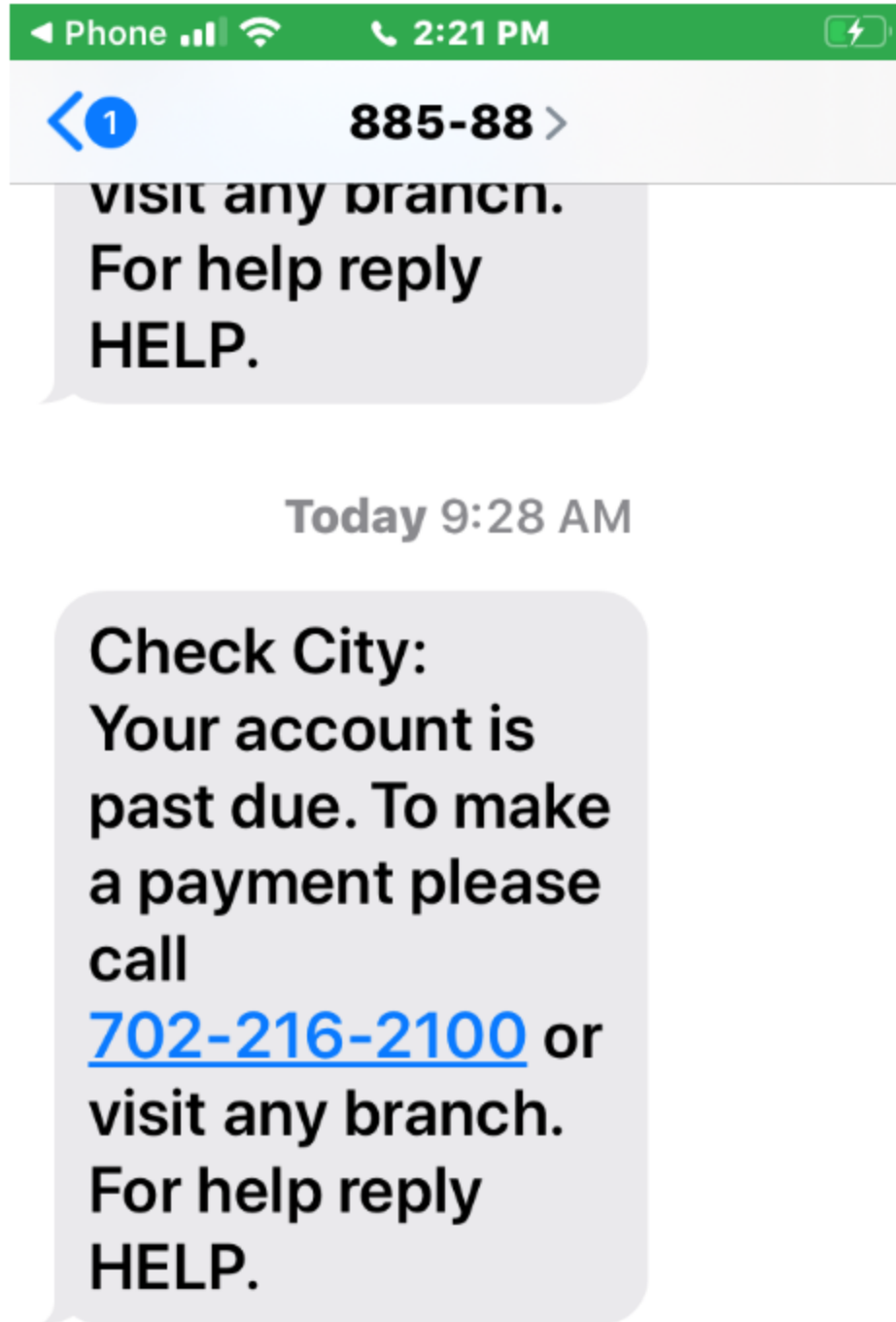
1 39. Check City or its agent/s contacted Plaintiff on Plaintiff's cellular
2 telephone number ending in "5639" via an ATDS as defined by 47 U.S.C. §
3 227(a)(1), as prohibited by 47 U.S.C. § 227(b)(1)(A).
4

5 40. As described above, Plaintiff filed the Bankruptcy on February 21,
6 2020, thereby revoking consent, if any ever existed, to be contacted by Check City
7 via an ATDS. Further, after Check City continued contacting her, Plaintiff expressly
8 instructed it to stop contacting her.
9

10 41. Moreover, Check City did not have prior express consent to place any
11 automated or prerecorded calls or texts to Plaintiff on Plaintiff's cellular telephone at
12 any time.
13

14 42. However, Check City placed calls and texts to Plaintiff's cellular
15 telephone without consent using an ATDS in violation of the TCPA.
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17 43. An example of the unsolicited automated text messages Plaintiff has
18 received is reprinted below:
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44. Check City's ATDS has the capacity to store or produce telephone numbers to be called or texted, using a random or sequential number generator.

1 45. The telephone number that Check City used to contact Plaintiff was and
2 is assigned to a cellular telephone service as specified in 47 U.S.C. §
3 227(b)(1)(A)(iii).

4
5 46. Check City's calls and texts to Plaintiff's cellular telephone were not for
6 "emergency purposes."

7
8 47. Pursuant to the TCPA and the FCC's January 2008 Declaratory Ruling,
9 the burden is on Check City to demonstrate that it had prior express consent to call or
10 text Plaintiff's cellular phone with an ATDS.

11
12 48. Plaintiff suffered actual harm and loss, since the unwanted calls and
13 texts depleted Plaintiff's cell phone's battery, and the cost of electricity to recharge
14 the phone is a tangible harm. While small, this cost is a real one, and the cumulative
15 effect can be consequential, just as is true for exposure to X-rays resulting from
16 Check City's unwanted phone calls to Plaintiff's cell phone.

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18
19 49. Plaintiff also suffered from an invasion of a legally protected interest by
20 placing calls and texts to Plaintiff's personal phone line when Check City had no
21 right to do so, resulting in an invasion of Plaintiff's right to privacy. The TCPA
22 protects consumers from this precise behavior.

23
24 50. Plaintiff has a common law right to privacy. *E.g.*, Samuel D. Warren &
25 Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 1155, 193 (1890).
26 Congress sought to further protect that right by enacting the TCPA.
27
28

1 51. Plaintiff was also personally affected, since Plaintiff felt her privacy had
2 been invaded when Check City placed calls and texts to Plaintiff's phone line without
3 any consent to do so.

4
5 52. The injury suffered by Plaintiff is concrete because Check City's
6 violations caused Plaintiff to suffer an invasion of privacy.

7
8 **COUNT I**

9 **Violations of the FDCPA**
10 **(as incorporated through NRS 604A.5041)**

11 53. Plaintiff incorporates by reference all of the above paragraphs of this
12 Complaint as though fully stated herein.

13
14 54. Any violation of 15 U.S.C. §§ 1692a through j constitutes a violation
15 of NRS 604A.5041.

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17 55. Check City's conduct violated 15 U.S.C. § 1692c(a)(2) in that Check
18 City contacted Plaintiff after it knew Plaintiff was represented by an attorney.

19
20 56. Check City's conduct violated 15 U.S.C. § 1692c(c) in that Check
21 City engaged in communication with Plaintiff after written notification that
22 Plaintiff refuses to pay the Debt, or that Plaintiff requested Check City to cease
23 communication with Plaintiff.

24
25 57. Check City's conduct violated 15 U.S.C. § 1692d in that Check City
26 engaged in behavior the natural consequence of which was to harass, oppress, or
27 abuse Plaintiff in connection with the collection of a debt.
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62. Plaintiff has been required to retain the undersigned as counsel to protect Plaintiff's legal rights to prosecute this cause of action, and is therefore entitled to an award of reasonable attorneys' fees plus costs incurred.

**Negligent Violations of the
Telephone Consumer Protection Act,
(47 U.S.C. § 227, *et seq.*)**

64. Check City negligently placed multiple automated calls and texts to cellular numbers belonging to Plaintiff without Plaintiff's prior express consent.

71. As a result of Check City's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages up to \$1,500.00 for each call or text in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47

1 U.S.C. § 227(b)(3)(C).

2 72. Additionally, Plaintiff is entitled to seek injunctive relief prohibiting
3 such conduct by Check City in the future.
4

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant,
7
8 awarding Plaintiff:

- 9 1. consequential damages pursuant to NRS 604A.930 against Defendant for
10 Plaintiff;
- 11 2. statutory damages pursuant to NRS 604A.930 against Defendant for
12 Plaintiff;
- 13 3. for an award of actual damages pursuant to NRS 604A.930 against
14 Defendant for Plaintiff;
- 15 4. for an award of punitive damages pursuant to NRS 604A.930 against
16 Defendant for Plaintiff;
- 17 5. for an award of costs of litigation and reasonable attorney's fees pursuant to
18 NRS 604A.930 against Defendant for Plaintiff;
- 19 6. a "voiding" of the Debt, barring Defendant from collecting thereon, and
20 compelling Defendant to turnover any principal, interest or other charges or
21 fees collected on the Debt pursuant to NRS 604A.900(1).
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7. injunctive relief prohibiting such violations of the TCPA by Defendant in the future;
8. statutory damages of \$500.00 for each and every call and text in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
9. treble damages of up to \$1,500.00 for each and every call and text in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C);
10. any other legal or equitable relief that the court deems appropriate.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: May 5, 2020

Respectfully submitted,

By /s/ David Krieger, Esq.

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